Kujawski v Kujawski
2020 NY Slip Op 32096(U)
May 28, 2020
Supreme Court, Suffolk County
Docket Number: 05030/2019
Judge: Denise F. Molia
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Index No.: 05030/2019

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 39 - SUFFOLK COUNTY

ORIGINAL

PRESENT:

Hon. DENISE F. MOLIA
Justice

JAMES KUJAWSKI, Plaintiff, -against- DEBORAH KUJAWSKI, Defendant.	CASE DISPOSED: YES MOTION R/D: 1/21/2020 SUBMISSION DATE: 3/13/2020 MOTION SEQUENCE NO:001; MG; CASEDISP

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Upon the following papers read on this application by defendant for an order pursuant to CPLR 3211 [a][7] dismissing the verified complaint: Notice of Motion and Supporting Affirmation dated November 26, 2019, together with Exhibits A through D annexed thereto; Affirmation in Opposition dated December 12, 2019; Reply Affirmation dated December 29, 2019; it is

ORDERED that the defendant's motion for an order dismissing the complaint is granted; and it is further

ORDERED that plaintiff's complaint is dismissed, without prejudice.

This is a plenary action arising from a stipulation of settlement dated August 14, 2019 (the "stipulation") between the parties hereto, who were married on April 13, 2013. The action was commenced on September 24, 2019 by the filing of a summons and verified complaint. The complaint contains three causes of action, those being, for rescission, vacatur, and reformation of the stipulation on the grounds that the stipulation was the product of overreaching, fraud, duress, and economic coercion. In particular, plaintiff alleges that he was not represented by counsel prior to or during the signing of the stipulation, he was not advised by an attorney as to the applicable maintenance guidelines, that he was never advised of the tax consequences of the stipulation, and that the distribution to plaintiff provided for therein is unfair and renders the stipulation

unconscionable. Defendant moves to dismiss the complaint pursuant to CPLR 3211 [a][7] on the grounds that plaintiff acknowledged that he was advised to seek counsel and knowingly waived his right to do so. Defendant further asserts that plaintiff acknowledged that he entered into the stipulation voluntarily of his own free will and he agreed that the stipulation was not the result of any fraud, duress, or undue influence by defendant. Plaintiff opposes the motion and defendant replies.

It is well established that on a motion to dismiss a complaint pursuant to CPLR 3211, the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (***Connaughton v. Chipotle Mexican Grill, Inc.,*** 29 NY3d 137, 141-42, 53 NYS3d 598 [2017]; ***Rosenblum v. Island Custom Stairs, Inc.,*** 130 AD3d 803, 803, 14 NYS3d 82 [2d Dept 2015]; ***Country Pointe at Dix Hills Home Owners Assn., Inc. v. Beechwood Organization,*** 80 AD3d 643, 649, 915 NYS2d 117 [2d Dept 2011], *quoting* ***Schneider v. Hand,*** 296 AD2d 454, 744 NYS2d 899 [2002]). "The test of the sufficiency of a pleading is 'whether it gives sufficient notice of the transaction, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments'" (***Hampshire Prop. v. BTA Bldg. and Developing, Inc.,*** 122 AD3d 573, 573, 996 NYS2d 129 [2d Dept 2014], *quoting* ***Leon v. Martinez,*** 84 NY2d 83, 88, 638 NE2d 511, 614 NYS2d 972 [1994]; *see also* (***JPMorgan Chase v. J.H. Electric of N.Y., Inc.,*** 69 AD3d 802, 803, 893 NYS2d 237 [2d Dept 2010], *quoting* ***Moore v. Johnson,*** 147 AD2d 621, 621, 538 NYS2d 28 [1989]; CPLR 3013). Thus, the inquiry is whether the pleading states a cause of action, not whether the plaintiff has a cause of action (***Sokol v. Leader***, 74 AD3d 1180, 904 NYS2d 153 [2d Dept 2010]). "Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus in determining a motion to dismiss" (***EBC I, Inc. v. Goldman, Sachs & Co.***, 5 NY3d 11, 19, 799 NYS2d 170 [2005]). However, "conclusory averments of wrongdoing are insufficient to sustain a complaint unless supported by allegations of ultimate facts" (***Muka v. Greene County***, 101 AD2d 965, 965, 477 NYS2d 444 [4th Dept 1984]; *see* ***DiMauro v. Metropolitan Suburban Bus Auth.***, 105 AD2d 236, 483 NYS2d 383 [2d Dept 1984]; ***Melito v. Interboro Mut. Indem. Ins. Co.***, 73 AD2d 819, 423 NYS2d 742 [4th Dept 1979]; ***Greschler v. Greschler***, 71 AD2d 322, 422 NYS2d 718 [2d Dept 1979]). "Dismissal of the complaint is warranted if they plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (***Connaughton v. Chipotle Mexican Grill, Inc.,*** 29 NY3d 137, 141-42, 53 NYS3d 598 [2017]).

A fiduciary relationship exists between spouses and, as such, their matrimonial agreements are scrutinized by the courts more than ordinary contracts (*see* ***Gardella v. Remizov***, 144 A.D.3d 977, 979, 42 N.Y.S.3d 225, 228 [2d Dept. 2016]; ***Cruciata v. Cruciata,*** 10 AD3d 349, 780 NYS2d 761 [2d Dept. 2004] *citing* ***Christian v. Christian,*** 42 NY2d 63, 72-73, 396 NYS2d 817 [1977]). Notwithstanding, "marital settlement agreements are judicially favored and are not to be easily set aside" (***Simkin v. Blank,*** 19 NY3d 46, 945 NYS2d 222 [2012]; ***Leacock v. Leacock,*** 132 AD3d 818, 18 NYS3d 648 [2d Dept. 2015]; *see also* ***Hallock v. State of New York,*** 64 NY2d 224, 230, 485 NYS2d 510 [1984]; ***Christian v. Christian,*** 42 NY2d 63, 396 NYS2d 817 [1977]; ***McClorey v. McClorey,*** 153 AD3d 1252, 61 NYS3d 290 [2d Dept. 2017]; ***Forcelli v. Gelco Corp.,*** 109 AD3d 244, 972 NYS2d 570 [2d Dept. 2014]). While courts favor stipulations of settlement and they are to be enforced according to their terms in accordance with general principles of contract law,

stipulations of settlement can be set aside or vacated upon a showing of fraud, collusion, mistake, duress, coercion, or overreaching (*see* ***Hallock v. State of New York,*** 64 NY2d 224, 485 NYS2d 510 [1984]; ***Dubi v. Skiros Corp.,*** 66 AD3d 954, 886 NYS2d 833 [2d Dept. 2009]; ***Libert v. Libert,*** 78 AD3d 790, 911 NYS2d 133 [2d Dept. 2010]; ***Feuer v. Darkanot,*** 36 AD3d 753, 829 NYS2d 164 [2d Dept. 2007]; *cf.* ***ATS-1 Corp. v. Rodriguez,*** 156 AD3d 674, 67 NYS3d 60 [2d Dept. 2017]; ***Town of Clarkstown v. M.R.O. Pump & Tank, Inc.,*** 287 AD2d 497, 731 NYS2d 231 [2d Dept. 2001]; ***Kazimierski v. Weiss,*** 252 AD2d 481, 675 NYS2d 124 [2d Dept. 1998]).

A stipulation of settlement in a matrimonial action "is unconscionable if it 'is one which no person in his or her senses and not under delusion would make on the one hand, and no honest and fair person would accept on the other, the inequality being so strong and manifest as to shock the conscience and confound the judgment of any person of common sense' " (***Gardella v. Remizov***, 144 A.D.3d 977, 979, 42 N.Y.S.3d 225, 228 [2d Dept. 2016] *citing* ***Sanfilippo v. Sanfilippo***, 137 A.D.3d 773, 774, 31 N.Y.S.3d 78 [2d Dept. 2016], *quoting* ***Label v. Label***, 70 A.D.3d 898, 899, 895 N.Y.S.2d 192). The mere fact that a plaintiff was not represented by counsel either before or when the stipulation of settlement was executed "does not, without more, establish overreaching or require automatic nullification of the agreement" (***Brennan v. Brennan,*** 305 AD2d 524, 525, 759 NYS2d 744 [2d Dept. 2003]; *see also* ***Brennan-Duffy v. Duffy,*** 22 AD3d 699, 804 NYS2d 399 [2d Dept. 2005]). This result is more compelling where the plaintiff acknowledges that he was advised to retain his own counsel (***Brennan-Duffy v. Duffy,*** 22 AD3d 699, 804 NYS2d 399 [2d Dept. 2005]). In addition, courts will not nullify an agreement because it may be considered one-sided or because a party changed their mind afterwards (*see* ***Mizrahi v. Mizrahi,*** 171 AD3d 1161, 99 NYS3d 63 [2d Dept. 2019]; ***Brennan-Duffy v. Duffy,*** 22 AD3d 699, 804 NYS2d 399 [2d Dept. 2005]).

In the stipulation between the parties hereto, paragraph 13.1 states, in pertinent part, that plaintiff has appeared pro se and that "he has chosen not to retain counsel...he has been advised the he should obtain counsel to review this Agreement and has waived his right to do so." As to the marital residence, paragraph 10.1 acknowledges that the defendant is the owner of the marital residence and that it was owned by defendant prior to the marriage. Paragraph 10.3 further states that defendant will retain all contents of the marital home excluding all items plaintiff "brought into the marriage." Paragraph 7.1 of the stipulation provides that the parties are aware of the maintenance guidelines and after reviewing them, "the parties have agreed that neither party shall pay maintenance to the other party." Paragraph 7.2 of the stipulation contains the notice of maintenance guidelines pursuant to Domestic Relations Law § 236. Paragraph 15.2 of the stipulation provides, in pertinent part, that "[e]ach party acknowledges that he or she has had the full opportunity to become fully familiar with the respective financial condition of the other and the earning potential of the other...each party acknowledges that any failure on his or her part to seek disclosure of the other's financial position, assets, etc., is purely voluntary and shall not form a basis for any claim of lack of knowledge, fraud, mistake, overreaching, unconscionability, concealment or failure to disclose except to the extent that the information required may have been misrepresented or knowingly concealed by the providing party." Paragraph 15.2 further provides that "[e]ach party is satisfied that this agreement constitutes a fair and reasonable resolution of their disputes irrespective of the financial condition of the other." Paragraph 16.1 further states that "each party...acknowledges that this agreement has not been the result of any fraud, duress, or undue influence exercised by either party upon the other or by any other person or persons upon the other." According to paragraph

15.3, the parties waived their rights to any other distribution of assets except as provided for in the stipulation.

Plaintiff asserts that the stipulation was the result of overreaching, fraud, duress, and economic coercion. "Fraud in the execution...arises where a party did not know the nature or the contents of the document being signed, or the consequences of signing it, and was nonetheless misled into doing so" (***Whitehead v. Town House Equities, Ltd.,*** 8 AD3d 367, 368, 780 NYS2d 15, 17 [2d Dept. 2004]). In the complaint, plaintiff states no factual allegations of fraud. Indeed, plaintiff does not allege any material misrepresentations nor any other required element, which are to be asserted with specificity to state a claim of fraud (CPLR 3016 [b]; ***Eurycleia Partners, LP v. Seward & Kissel, LLP,*** 12 NY3d 553, 559, 883 NYS2d 147 [2009]). Plaintiff provides no details as to any statements made, which purportedly induced him to execute the stipulation. Without the necessary factual details, plaintiff's allegations of fraud cannot lie as the basis for the relief he is seeking. The same is true with respect to plaintiff's claims of duress, economic coercion, and overreaching. Plaintiff's complaint contains no allegations of any such conduct or wrongdoing on the part of defendant, which would entitle plaintiff to the relief he is requesting. The complaint contains no factual assertions to support any such claims and only states in conclusory fashion that the stipulation was the result of overreaching, fraud, duress, and economic coercion. (*see* ***Karen E. v. Yoram E.,*** 144 AD3d 1081, 42 NYS3d 281 [2d Dept. 2016]; *cf* ***Cruciata v. Cruciata,*** *supra*).

Plaintiff further alleges that several of the statements in the stipulation that he signed are not true. In particular, plaintiff claims that the he was never made aware of the maintenance guidelines, that he was never advised by an attorney prior to or at the time of the signing of the stipulation of his right to retain an attorney, and that he was not advised of the tax consequences of the stipulation. The stipulation, however, contains the maintenance guidelines and plaintiff specifically acknowledged therein that he was advised to obtain counsel to review the stipulation. Plaintiff further acknowledged that he was advised that there may be certain tax consequences as a result of the stipulation and that he was directed and advised to obtain independent tax advice prior to signing the stipulation. Plaintiff signed the stipulation containing these provisions and he cannot now claim that he was unaware of the statements he acknowledged, especially in the absence of any specific allegations of fraud, overreaching, undue influence, or coercion. Further, any claims by plaintiff for reformation of the stipulation are belied by the clear and unambiguous terms of the stipulation.

Plaintiff further alleges that he was not represented by counsel either before or at the time the stipulation was executed. However, an allegation of the lack of representation of counsel is insufficient, by itself, to warrant the rescission, vacatur or reformation of a stipulation (***Wilson v. Neppell,*** 253 AD2d 493, 677 NYS2d 144 [2d Dept. 1998]). This is especially so, where, as here, plaintiff acknowledges that he was advised to retain an attorney to review the stipulation (***Id.***; *see also* ***Brennan v. Brennan,*** 305 AD2d 524, 525, 759 NYS2d 744 [2d Dept. 2003]; ***Nasifoglu v. Nasifoglu,*** 224 AD2d 504, 637 NYS2d 792 [2d Dept. 1996]).

Plaintiff asserts that the stipulation is unconscionable, in that he only received a distributive award of $5,000.00, a sonos player, and his Local 1295 pension. Plaintiff does not allege how and in what respect the terms of the stipulation are unconscionable. In particular, plaintiff does not provide the details regarding the marital residence that was owned by defendant prior to the marriage

on April 13, 2013, he does not allege any increase in the equity in the marital home since April 13, 2013, he does not provide the value of his Local 1295 pension or any other salient facts that are necessary in order to state a claim that the stipulation is unconscionable. In the absence of allegations as to these necessary facts and valuations, plaintiff has not stated that the stipulation is unfair on its face or that it should be rescinded, vacated or reformed on the grounds that it is unconscionable.

Accordingly, the defendant's motion is granted and plaintiff's complaint is dismissed, without prejudice.

Dated: 5-28-20

HON. DENISE F. MOLIA

HON. DENISE F. MOLIA, A.J.S.C.